

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(78) 146 final.

Brussels, 6 April 1978.

DRAFT FOR A COUNCIL DECISION
CONCERNING THE ACTIVITIES OF
CERTAIN STATE-TRADING COUNTRIES
IN CARGO LINER SHIPPING

(submitted to the Council by the Commission)

COM(78) 146 final.

EXPLANATORY MEMORANDUM

The problems caused by the activities in cargo liner shipping of certain state-trading countries of Eastern Europe (mainly the Soviet Union, but to some extent also Poland and the German Democratic Republic) have been under examination for some time in the Community. These problems were mentioned in the Commission's Communication to the Council of 30 June 1976 on the Community's relations with non-member countries in shipping matters. In 1977 the United Kingdom Government put forward a note on the subject, and in the course of discussion of this the Commission's services were invited to prepare a working paper analysing the problems and reviewing possibilities for action at Community level. This working paper was presented to the Council, which in October 1977 asked the Permanent Representatives Committee to examine it in detail and prepare priority guidelines for use by the Commission when making practical proposals to the Council for dealing with the situation arising from the increasing non-commercial activity of certain state-trading countries' liner fleets.

2. The present draft reflects subsequent discussion between the Commission's services and Member State experts of the potential actions explored in the Commission's services' working paper.

The shipping problem

3. The activities in cargo liner shipping of certain state-trading countries, particularly the Soviet Union, and the impact of these activities on Community shipping and trade, were discussed in some detail in the Commission's services' working paper; this detail is not repeated in the present memorandum. The basic features of the situation are that the cargo liner fleet especially of the Soviet Union has been expanding swiftly since the early 1970s and is planned to expand further. The ships concerned are employed in trades of interest to the Community, not only trades between Member States and the Soviet Union, but also, and much more importantly, in trades between Member States and third countries, for example on the North Atlantic. They are also active in trades between many commercially important third countries (for example between Japan and the United States) in which Community shipowners are also engaged.

4. This might cause no particular problem if the ships concerned were operated on commercial terms as applied in market economy countries. But in fact the liner shipping operators of state-trading countries compete with Community and other Western shipowners using methods to which Member State shipping companies, however efficient they may be, have no effective commercial answer. These methods,

available - at a price - under a state-trading economy, include controlling the terms of shipment in the bilateral trades; restricting the freedom of Member State shipping interests to establish agencies in the state-trading countries while remaining free to establish agencies in the Member States; and substantial undercutting of freight rates, in trades between Member States and third countries and between third countries, allowing the state trading countries' operators to cream off the most profitable traffic and put Member States' ship-owners under constant financial pressure.

5. In its bilateral trades with the Member States, the Soviet Union carries up to 95 % of the trade. In its cross-trades between third countries, its competitive methods are more and more successful. For instance, state-trading country liners, operating outside the liner conferences, are reported to have captured already traffic equivalent to 18 % of the eastbound and 22 % of the westbound traffic carried by the conferences on the North Atlantic. Between Northern Europe and the West Coast of South America the equivalent figure is about 25 %, between Gulf of Mexico ports and the Mediterranean 20%, in the Europe-East Africa traffic 20 % and between Japan and the West Coast of the United States 12 %. Although these traffic shares are much less than in the bilateral trades, the actual volumes carried are higher; indeed, in terms of value and dislocative effect, these traffic shares are very significant and will continue to rise unless corrective action is taken.

6. Such action needs to be taken at the level of the public authorities, since Member States' liner companies have no effective way of competing successfully with the state-trading countries' fleets at commercial level, given the aggressive and uncommercial methods employed by these fleets. In the Commission's view there is a clear case in shipping policy terms for preparing for action now. Other considerations, discussed below, do not conflict with this conclusion.

Other policy considerations

7. In the short run shippers benefit from the low freight rates offered by state-trading country shipping companies. But in the longer term shippers could themselves become vulnerable if these companies achieved a dominant position in particular trades, allowing them to impose freight rates and determine the quality of service. In September 1977 the General Assembly of the European Shippers' Councils expressed concern about the increasing penetration of liner trades by state-controlled carriers. The Assembly had in mind that in the longer term such penetration might create a harmful monopoly. Generally, the Community's trading interests could be harmed if the continued existence of

a range of commercially based shipping services were endangered.

8. It may be claimed that the state-trading countries must retain the opportunity to earn hard currencies in the West through the sale of shipping services, in order to be able to pay for imports of Western commodities and technology. But only a relatively insignificant proportion of the state-trading countries' foreign trade can be covered by the income resulting from shipping. And it seems unlikely that the placing of limits on these countries' participation in the Community's cargo liner traffic would have a negative impact on the Community's trade with them. Short of reducing the volume of their trade with Western countries as a whole, the state-trading countries would have little scope for shifting their demand pattern geographically. The most important trading partners of the state-trading countries are themselves obtaining countervailing powers in the field of shipping. A Bill on state-controlled carriers, introduced into the US Congress on 3 November 1977 with the backing of the State Department, would prevent the charging of uneconomic rates. Japan is also preparing countervailing legislation which would enable it to control the participation of state-trading countries carriers in its trades. In any case, the state-trading countries are not normally able to shift their demand patterns quickly, given the long-term nature of their economic planning and the nature of their demand, i.e. for high technology goods and complementary technical know-how, as well as their requirements for long-term finance or compensatory deals. It seems unlikely, therefore, that these countries would retaliate by reducing or shifting their trade with Member States.

9. The state-trading countries might seek to present any move by the Community to regulate access to its liner traffic as discriminatory and violating the spirit of Helsinki, existing bilateral agreements on commerce and navigation and international conventions.

10. However, the Helsinki agreement itself sets out as a transport objective reasonable participation in traffic on a mutually advantageous basis. In the bilateral trades Community liner operators are virtually excluded and in the cross trades they are losing ground. The present proposal merely seeks to obtain or maintain fair competitive conditions for all shipping operators, taking into account the differences in the economic systems. It is a direct response to aggressive behaviour in shipping by state-trading countries' fleets and cannot, in the Commission's view, be regarded as in conflict with the spirit of Helsinki.

11. There are numerous bilateral agreements on commerce and navigation between Member States and state-trading countries, particularly the Soviet Union. These usually grant each of the contracting parties most favoured nation status in

their bilateral maritime relations. To the extent that such agreements also grant access to each other's cargo on the basis of most favoured nation status, the introduction of quantitative restrictions as envisaged in the present proposal could indeed imply the need to re-negotiate or denounce certain bilateral agreements. Member States would, however, be able to claim that those had not been meaningfully observed by their state-trading country partners. The proposed measures might also be claimed to be flag discrimination as defined in the GATT Annex of 28 April 1969. But of the state-trading countries only Czechoslovakia, Hungary, Poland and Roumania adhere to GATT, and there exist GATT rules which in any case allow the application of defensive measures in certain circumstances. Finally, the 1923 Convention on the International Regime of Maritime Ports, should not in practice impede the application of the proposed Decision.

The Present draft.

12. The present draft is for the Community to equip itself with a mechanism for the concerted application of Member States' countervailing powers where the objectives regarded by the Community as appropriate for the relations between its liner shipping and that of certain state-trading countries are not being met. In relation to these countries, regrettably, only action at the level of the public authorities seems likely to be effective; action at commercial level does not work because the state-trading countries' shipping companies need not respond to commercial pressures.

13. Concerted action within the Community is desirable in order to avoid the diversion of trade from a Member State applying countervailing measures to another not doing so.

14. The draft provides essentially for the Council to adopt objectives for its relations with state-trading countries in the field of cargo liner shipping; for reviewing at Community level - using an existing consultation procedure - the output of monitoring systems operated by Member States with a view to following the activities of state-trading countries' cargo liner operators; and for the Council to be able to decide on the joint application of Member States' countervailing powers, notably in the field of quantitative limitations on the activities of state-trading countries' liner companies in Member State ports. It would be possible for the Council to decide that only the Member States specially affected in a particular case should use their countervailing powers; and adoption of the present decision would not affect the freedom of an individual Member State to act alone if it thought this wise, and, of course, to negotiate bilaterally with a state-trading country on shipping matters. In short, the draft is for a

mechanism capable of flexible response to a developing situation.

15. Further measures - for example in the field of the establishment and operations in the Community of shipping undertakings controlled by state-trading countries - may be needed at a subsequent stage.

COMMENTS ON INDIVIDUAL ARTICLES

Article 1

This article, together with the Annex, sets out the objectives to be pursued by the Member States and the Community in their relations with state-trading countries in the field of cargo liner shipping. These objectives aim at :

- acceptance of state-trading countries' carriers as third country carriers in EEC trades, provided that the commercial viability of efficient EEC carriers is not threatened;
- reasonable participation of EEC carriers as third country carriers in state-trading countries' trades; and
- adequate participation of EEC carriers in bilateral liner trades and reasonable third country participation.

Article 2

This article provides for the establishment by Member States of appropriate monitoring systems designed to follow the activities of state-trading countries' carriers in EEC trades. The information concerned is to be forwarded to the Commission, which will summarise it for discussion in an existing consultative mechanism.

Article 3

This article provides for the regular examination by Member States and the Commission within the consultative mechanism of the activities of state-trading countries in liner shipping. The output of the monitoring systems should serve as part of the basis for such examination.

Article 4

Under this article the Council may decide, on a proposal of the Commission, that all Member States, or Member States affected in a particular case, should jointly apply, in relation to state-trading countries' liner shipping, appropriate measures provided for in their national legislation. These measures may include in particular the imposition, generally or in a specific trade, of quantitative restrictions on the activities of state-trading countries' liner operators.

Articles 5 and 6

No comment.

DRAFT OF A COUNCIL DECISION CONCERNING THE ACTIVITIES OF CERTAIN STATE-TRADING
COUNTRIES IN CARGO-LINER SHIPPING

The Council of the European Communities

Having regard to the Treaty establishing the European Economic Community and in particular article 84.2 thereof;

Having regard to the draft from the Commission;

Whereas the Community's economic and trading interests require reliable shipping services to be available within the framework of an economically sound system in which efficient Community carriers can compete under normal commercial conditions with merchant marines under other flags;

Whereas, in the interests of shippers' ability to choose and the freedom of international trade, state-trading countries' liner fleets may participate in this system, like other fleets, in the transport of the overseas trade of the Community, provided that the commercial viability of shipping in particular trades or generally is not thereby threatened;

Whereas however the differences between the economic behaviour of market economy and state-trading countries have created distortions of competitive conditions between liner operators based in the Community and those of state-trading countries, to the disadvantage of operators based in the Community and potentially of the Community's trading interests;

Whereas in particular the state-trading countries apply in liner shipping trade practices such as prices not reflecting costs as established in accordance with market economy practices; control of terms of shipment; and imposition of administrative and other trade barriers incompatible with the market economy systems of Member States;

Whereas the disadvantages flowing from these practices cannot be countered by methods appropriate to the economic and commercial relationships between market economy countries;

Whereas the Member States and the Community should pursue defined objectives in their relationships with state-trading countries in the field of liner shipping;

Whereas it is appropriate to establish monitoring systems enabling the institutions of the Community to be informed of developments relating to state-trading countries' participation in the Community's liner trades; and to facilitate consultation at Community level;

Whereas it is necessary for arrangements to be made at Community level for the joint application of Member States' countervailing powers in relation to the liner shipping activities of state-trading countries;

HAS ADOPTED THIS DECISION

Article 1

The Member States and the Community shall pursue the objectives set out in the Annex to this Decision in their relations with state-trading countries in the field of liner shipping.

Article 2

1. Each Member State shall institute a monitoring system designed to obtain and record information on the development of the liner shipping activities of state-trading countries, with special reference to :

- the establishment, expansion or modification of liner services, including the number of calls of the vessels concerned in Community ports;
- the nature, volume, origin and destination of the commodities carried by those vessels.

2. Each Member State shall forward to the Commission every six months the information produced by its monitoring system.

3. The Commission shall summarise the information for the Community as a whole. Article 4 of Council Decision 77/587/EEC shall be deemed to apply to this information.

Article 3

1. The Member States and the Commission shall examine regularly, within the framework of the consultation procedure established by the aforementioned Decision, and inter alia on the basis of the output of the monitoring systems referred to in Article 2, the activities of state-trading countries in liner shipping.

2. In paragraph 1 of Article 1 of the aforementioned Decision the following sub-paragraph shall be added after sub-paragraph (b) :
"(c) on the liner shipping activities of state-trading countries".

Article 4

1. If in its view the objectives set out in the Annex to this Decision are not being met in relation to the liner shipping activities of a state-trading country, the Council may decide, acting by qualified majority on a proposal of the Commission, on the joint application by the Member States of appropriate counter-

vailing measures. Such measures may be required to be applied generally, by certain Member States only or in a specific area or trading range and may in particular cover the licensing of liner services and the imposition of limits on the volume, nature, proportion or value of cargo which may be loaded on to or discharged from the ships concerned in the ports of Member States implementing those measures.

2. Nothing in this Article shall prevent a Member State from applying its national countervailing measures unilaterally.

Article 5

As soon as possible and not later than 1 January 1979, Member States shall, after consulting the Commission, adopt such laws, regulations or administrative provisions as may be necessary for the implementation of this Decision.

Article 6

This Decision is addressed to the Member States.

Done at Brussels

For the Council.

OBJECTIVES TO BE PURSUED BY THE MEMBER STATES AND THE COMMUNITY IN THEIR
RELATIONSHIPS WITH STATE-TRADING COUNTRIES IN THE FIELD OF LINER SHIPPING

In trades between EEC ports and other ports outside state-trading countries, carriers of state-trading countries may participate as third-country carriers, either as conference members or outside conferences, provided the viability and reliable availability of services provided under the normal conditions of the trade by efficient commercial carriers are not thereby threatened.

Where state-trading country carriers operate outside liner conferences they should not apply tariffs lower than those of other non-conference carriers sustainedly offering regular services on a particular route where state-trading country carriers are the only outsiders in a particular trade they should be encouraged to set their tariffs in consultation with shippers' representatives and the liner conferences concerned.

EEC carriers should have reasonable access to trades between state-trading countries' ports as well as between state-trading countries' ports and other non-EEC ports.

In bilateral trades between the Community and state-trading countries, there should be adequate participation for EEC carriers in both directions at freight rates compensatory for those carriers. Third-country carriers should have reasonable access to these trades.